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Outcome of the tenth session of the Working Group on the issue of human rights and transnational corporations and other business enterprises

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Contents

		Paragraphs	*Page*
I.	Summary	1–2	3
II.	Activities of the Working Group on national action plans on business and human rights and interaction with States concerning the guidance prepared by the Working Group on the essential substantive elements in a national action plan	3–5	3
III.	Strategy for the next term of the Working Group	6–8	4
IV.	Fourth annual Forum on Business and Human Rights and a proposed third regional Forum	9–10	4
V.	Other Working Group projects, meetings and salient issues	11–20	5
VI.	Chairperson and Vice-Chairperson	21	7
Annex			
	Methods of work (revised on 20 February 2015)		8

I. Summary

1. The Working Group on the issue of human rights and transnational corporations and other business enterprises held its tenth session in Geneva, Switzerland from 16 to 20 February 2015. It convened meetings and discussions on the following:

(a) The activities of the Working Group to promote State national action plans as a vehicle to implement the Guiding Principles on Business and Human Rights, and the guidance issued by the Working Group on this issue on 1 December 2014 at the third annual Forum on Business and Human Rights;

(b) Two open consultation meetings, respectively with States and intergovernmental organizations, and civil society organizations, to consult on the Working Group's plans and to seek input on specific projects;

(c) Strategy for the next three-year term of the Working Group, including a review of the Working Group's Methods of Work (attached as an Annex to the present report);

(d) Feedback on the third annual Forum on Business and Human Rights (held in Geneva, Switzerland 1 - 3 December 2014); stock-taking in relation to the second regional Forum on Business and Human Rights (the African Regional Forum on Business and Human Rights, held in Addis Ababa, Ethiopia 16 - 18 November 2014); plans to hold a third regional Forum on Business and Human Rights in Asia during 2015; and advance planning in relation to the fourth annual Forum on Business and Human Rights to be held in Geneva, Switzerland 16 - 18 November 2015;

(e) Other Working Group projects, meetings and salient issues, including its proposed country visits; its communications to States and businesses, where appropriate, in relation to pressing human rights issues; the negotiation of the Sustainable Development Goals; initiatives relating to measuring and monitoring uptake and implementation of the Guiding Principles on Business and Human Rights; the Working Group's upcoming report to the General Assembly; and its cooperation with the International Labour Organization (ILO).

2. The present report summarizes some of the key items discussed.

II. Activities of the Working Group on national action plans on business and human rights and interaction with States concerning the guidance prepared by the Working Group on the essential substantive elements in a national action plan

3. During its session, the Working Group discussed the feedback it had received in relation to the guidance for States on the development of national action plans on business and human rights which it launched on 1 December 2014 at the third annual Forum on Business and Human Rights[1]. The guidance sets out the essential elements for an effective and successful national action plan process.

4. The Working Group noted that an increasing number of States were seeing the value of developing a national action plan on business of human rights, and were either finalising

[1] For more information see http://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx.

their national action plans, or were announcing their intentions to start the process of formulating a national action plan on the basis of multi-stakeholder dialogues. The Working Group emphasized that the development of national action plans on business and human rights would help with increasing implementation of, and awareness of, the Guiding Principles on Business and Human Rights by States, civil society organizations, national human rights institutions, and business enterprises. The Working Group reflected that its outreach in this area, together with that of civil society organizations, seemed to be bearing fruit.

5. The Working Group reiterated its commitment to liaise with users of the guidance (in other words, a NAP users group) to make sure that subsequent iterations of the guidance reflect, and are informed by, the user experience. The Working Group asserted that the NAP users group must be diverse and include States that are embarking on a national action plan process in addition to States that have already completed a national action plan. It also confirmed that it stands ready to assist States and civil society organizations which are in the process of developing national action plans, and that States that already have a national action plan should keep it under review and regard it as a "living document" to be updated and refreshed on a regular basis. This will enable the national action plan to reflect the evolution of business-related human rights challenges, address gaps, and respond to changing legislative and regulatory frameworks and business environments.

III. Strategy for the next term of the Working Group

6. The tenth session was the first session to be held during the second three-year term of the Working Group. The Working Group considered at its ninth session that the end of the first three-year term, and the commencement of the second term, provided an appropriate opportunity to review the Working Group's strategy and priorities, identify new priority areas, and listen to, and talk with, stakeholders working on business and human rights issues, in order to update the Working Group's strategy for the next three years. The Working Group continued the discussions about its strategy started during the ninth session and made plans during the tenth session for the coming three years of its mandate.

7. The Working Group devoted half a day to consultations with States and intergovernmental organizations, and civil society organizations, during which time it collected valuable input as to pressing issues and areas to prioritise during the Working Group's second mandate.

8. While discussing its strategy for the second term of its mandate, the Working Group took the opportunity to review and revise its Methods of Work. The revised Methods of Work is attached as an Annex to the present report. Notably, the Working Group included in its Methods of Work the mandated activities set out in Human Rights Council resolution 26/22, the regional forums on business and human rights that the Working Group convenes (subject to available funding), and its communications procedure. The Working Group also stated that, in addition to country visits, it may undertake field visits to business enterprises, multilateral organizations and agencies, sovereign wealth funds, stock exchanges, international non-governmental organizations, and other relevant actors.

IV. Fourth annual Forum on Business and Human Rights and a proposed third regional Forum

9. The Working Group, which is mandated by the Human Rights Council to guide the annual Forum on Business and Human Rights, discussed feedback received in relation to the third annual Forum on Business and Human Rights which was held in Geneva,

Switzerland 1 - 3 December 2014. It observed that the Forum had been attended by some 2,000 people from around 130 countries and that the Forum had attracted significant interest from business representatives and from a wide range of civil society organizations and human rights defenders. The Working Group, which oversees the preparations every year for the Forum on Business and Human Rights, discussed the plans underway for the fourth annual Forum, to be held in Geneva, Switzerland 16 - 18 November 2015. In particular, the Working Group discussed the proposed key-note speakers, areas of focus and areas for improvement. The Working Group noted that it aims to repeat the success of the third annual Forum on Business and Human Rights in involving stakeholders in the organization of parallel sessions. The third annual Forum on Business and Human Rights featured 39 parallel events led by external organizations, covering a diverse array of themes and topics. The Working Group decided that direct stakeholder contributions will also be a central feature of the fourth annual Forum on Business and Human Rights. Accordingly, the Working Group will, over the coming months, issue a call to States, business, civil society organizations, and other stakeholders to submit proposals for parallel sessions to be included in the programme of the fourth annual Forum on Business and Human Rights.

10. The Working Group discussed its intention to hold a Regional Forum on Business and Human Rights for Asia during 2015 and outlined the practical aspects to be resolved before plans for a Regional Forum could be finalised. The Working Group also reflected on the achievements of the African Regional Forum on Business and Human Rights held in Addis Ababa, Ethiopia 16 - 18 September 2014 which followed on from the success of the first regional forum, the Regional Forum on Business and Human Rights for Latin America and the Caribbean held in Medellín, Colombia, 28 - 30 August 2013.

V. Other Working Group projects, meetings and salient issues

11. The Working Group discussed its proposed country visits in 2015 and maintained its position that it would prioritize a visit to a country in Latin America and the Caribbean during 2015. Having undertaken visits to Mongolia 8 - 17 October 2012, the United States of America 22 April - 1 May 2013, Ghana 8 - 17 July 2013, and Azerbaijan 18 - 27 August 2014, the Working Group was keen to maintain regional parity and therefore pay a visit to a country in Latin America and the Caribbean.

12. The Working Group also discussed its planned communications to States, business enterprises and other relevant stakeholders, and the need to raise awareness about the communications procedure, including through the website of the Working Group.

13. The Working Group discussed its planned reports to the Human Rights Council, and to the General Assembly, and also discussed the thematic work it hoped to conduct over the course of its second term, including work on access to remedy, work on assessing the level of take-up of the Guiding Principles and the manner in which they have been implemented to date, a possible visit to a business enterprise or other non-State entity, and a possible visit to a country to observe the development of a national action plan on business and human rights.

14. The Working Group met with Office representatives of the ILO and discussed the on-going working arrangements between the ILO and the Working Group to further entrench existing cooperation and information sharing, for example in relation to labour aspects of reports on country missions, and heard about the ILO's work in relation to sector specific issues conducted by the Sectoral Activities Department. The Working Group

reiterated its decision that its revised Methods of Work document would reflect its decision, made at its eighth session, to formalize existing cooperation with the ILO.[2]

15. The Working Group received an update from the Institute for Human Rights and Business about the Corporate Human Rights Benchmark project which was launched during the 2014 Forum on Business and Human Rights. The project aims to rank 500 major companies in four main sectors on their human rights performance and will involve a world-wide consultation on the methodology during 2015.

16. The Working Group met with staff of the Office of United Nations High Commissioner for Human Rights and was updated on the work of the Office in relation to the implementation of the Guiding Principles on Business and Human Rights, as well as on the negotiations surrounding the Sustainable Development Goals and the relevance of the Guiding Principles on Business and Human Rights to those negotiations.

17. The Working Group held a meeting open to all States and intergovernmental organizations. The meeting provided an opportunity for the Working Group to present its plans and seek input on specific projects. In particular, the Working Group sought States' preliminary thoughts on the Working Group's Guidance on National Actions Plans on Business and Human Rights, launched in December 2014, and the Working Group's plans to identify a user group of States willing to engage in a NAP process in collaboration with the Working Group to test and improve the guidance document. The Working Group also sought States' input in relation to ways to improve the use of the annual Forum on Business and Human Rights to identify and take stock of global progress on the implementation of the Guiding Principles, including through providing a standing opportunity for States to share practice and lessons with respect to implementation of specific principles, The Working Group also engaged with States in relation to increasing the involvement and voice of business leaders in the annual Forum. States were very positive in their comments about the third annual Forum on Business and Human Rights. In particular, they commented on the positive environment and the quality of the constructive discussions that took place, along with the welcome focus on action and implementation. They noted that one of the strengths of the event was the presence of all the main stakeholder groups, including high level State and business representatives, and a number of high profile human rights defenders and civil society organizations. The Working Group gratefully acknowledged this input and noted the important role that States can play in attracting and encouraging high-level stakeholders to attend the fourth annual Forum on Business and Human Rights to be held in Geneva, Switzerland 16 - 18 November 2015.

18. The Working Group also acknowledged that, in accordance with Human Rights Council resolution 26/9, the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights will hold its first meeting in 2015, and the Working Group told States that it will stand ready to offer support as needed.

19. The Working Group held a consultation with civil society organizations and met with a wide range of stakeholders. The Working Group received input prior to the consultation from civil society organizations. Representatives from 15 organizations attended. The consultation enabled the Working Group to hear from civil society organizations about the initiatives they are taking in the field of business and human rights. Discussions focused on the uptake of national action plans on business and human rights by a number of States, and the role that civil society organizations can play in the national action plan process. Civil society organizations were keen to hear about the Working

[2] A/HRC/WG.12/8/1, para. 21.

Group's plans for country visits and a Regional Forum for Asia during 2015. Civil society organizations highlighted the recent upsurge in attacks against human rights defenders operating in the field of business and human rights. They emphasised that the Working Group's communications to States, business enterprises and other relevant stakeholders could be used as critical advocacy tools in protecting the rights of human rights defenders. The Working Group emphasised that the role, and protection, of human rights defenders should be of paramount importance during any national action plan process. The discussion also addressed the interest of certain civil society organizations in the extra-territorial nature, and application, of States' human rights obligations.

20. Finally, the Working Group acknowledged the recent resignation of Working Group member Alexandra Guáqueta and the imminent appointment of a new member of the Working Group from the Latin American and Caribbean region. The Working Group noted its thanks, and sincere appreciation, for Ms. Guáqueta's hard work, and her lasting contribution to the work of the Working Group, and wished her well.

VI. Chairperson and Vice-Chairperson

21. Following his appointment at the end of the eighth session, Michael Addo served as Chairperson of the Working Group, and Margaret Jungk served as Vice-Chairperson. As previously agreed, Michael Addo and Margaret Jungk will continue in these functions until 30 June 2015. From 1 July 2015, Margaret Jungk will serve as Chairperson of the Working Group.

Annex

Methods of work (revised on 20 February 2015)

Functioning of the Working Group

1. Appointment of officers

1. At its ninth session, the Working Group decided to rotate the role of Chairperson-Rapporteur every six months, starting from 1 July 2015.

2. The Chairperson-Rapporteur may decide to delegate his/her tasks to other members of the Working Group, following consultation with all other members.

3. The Working Group further decided to appoint a Vice-Chairperson, to fulfil all duties of the Chairperson when the Chairperson is otherwise unavailable. The Vice-Chairperson will normally be that member of the Working Group who will become Chairperson upon the end of the mandate of the current Chairperson.

2. Field visits

4. The Human Rights Council in its resolutions 17/4 requested the Working Group to conduct country visits and encouraged Governments, relevant United Nations agencies, funds and programmes, civil society actors, and the private sector to cooperate fully with the Working Group in fulfilling its mandate by, inter alia, responding favourably to requests for visits.

5. The Working Group places great importance on visiting countries and regions to assess the conditions of human rights and business on the ground and the level of implementation of the Guiding Principles on Business and Human Rights. The Working Group therefore intends to carry out two official country missions per year with the consent, or at the invitation, of the States concerned.

6. Country visits will be conducted in the spirit of constructive dialogue with States and all relevant stakeholders at the national level, including regional and other sub-national levels of government, to promote the effective dissemination and implementation of the Guiding Principles; to identify, exchange and promote good practices and lessons learned on the effective implementation of the Guiding Principles; and to assess and make recommendations thereon. Reports from official country missions will be submitted to the Human Rights Council. Consideration will be given to regional balance in the choice of country missions.

7. Two members of the Working Group will participate in each country mission. The Chairperson-Rapporteur will decide, in consultation with all other members, which members participate in any particular mission. As per standard practice, the composition of the visiting delegation will be communicated to the Government concerned during the preparation of the visit.

8. The Working Group may also undertake field visits to business enterprises, multilateral organizations and agencies, sovereign wealth funds, stock exchanges, international non-governmental organizations, and other relevant actors..

9. Additional field visits may be conducted by one or more members of the Working Group. Depending on the scope of the visit, and following consultation with the concerned

State, the Working Group may request approval to submit reports from such additional country visits to the Human Rights Council.

3. Field work

10. In addition to the official field visits, the Working Group aims to carry out its mandate in a manner that includes significant additional, relevant field work, frequently reaching out, consulting and engaging directly with individuals, communities, business enterprises and associations, Government actors, national human rights institutions and other stakeholders across all regions to inform its work and ensure that any findings and recommendations respond to practical and operational realities on the ground.

11. Individual Working Group members will participate in outreach on the Guiding Principles across all regions as appropriate, for the implementation of the different work streams.

4. Multi-stakeholder, consultative and inclusive approach

12. The Working Group fully recognizes the value and importance of adopting a multi-stakeholder, consultative and inclusive approach to the implementation of its mandate. Accordingly, the Working Group intends to engage in regular dialogue and cooperation with States, human rights mechanisms, intergovernmental bodies, relevant United Nations entities, regional and national human rights institutions, representatives of affected communities, business enterprises, civil society organizations, representatives of indigenous peoples and any other relevant stakeholders. Moreover, throughout its work, the Working Group will integrate a gender perspective and give special attention to persons living in vulnerable situations.

13. The Working Group intends to call for input from all relevant stakeholders on general mandate-related issues and/or issues relating to work streams and activities on a regular basis. This will be done in order to solicit information, documentation, good practice, challenges and lessons learned on the implementation of the Guiding Principles. Subject to the specific requirements of different work streams and the availability of adequate funding, the Working Group will also consider other means of consultation with relevant stakeholders, including regional or expert consultations and through country missions. The Forum on Business and Human Rights will also serve as a platform for involving and consulting all relevant stakeholders.

14. The Working Group is mindful of the work carried out by other treaty bodies and special procedure mandates, and will collaborate with these human rights mechanisms and take into consideration existing standards and initiatives developed by international and regional human rights mechanisms, as well as the available knowledge and tools produced to date by United Nations bodies (including the Global Compact), States, business and civil society on the subject of business and human rights.

15. The Guiding Principles refer to "internationally recognized human rights – understood, at a minimum as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work." In light of the close links with the mandate of the ILO, the Working Group and the ILO have decided on a working arrangement to formalize cooperation. In carrying out its functions in accordance with its mandate as an independent expert body, the Working Group will, where appropriate: (a) consult with the ILO on matters relating to the Guiding Principles that involve fundamental principles and rights at work and other issues within the competence of ILO; (b) take into account ILO comments and material relating to such issues in its

reports and other activities; and (c) coordinate with the ILO, as relevant, on follow-up action on Working Group outputs.

5. The Working Group's consideration of information received

16. The Working Group is mandated by resolution 17/4 of the Human Rights Council to seek and receive information from all relevant sources.

17. The Working Group welcomes information related to its mandate. Information received from relevant stakeholders will be used, as appropriate, by the Working Group to inform its work and strategy, to identify barriers to the effective implementation of the Guiding Principles and gaps in the protection of human rights in the context of business activities and to inform recommendations made to States, business and other actors, on the implementation of the Guiding Principles.

6. Communications procedure

18. Within the framework of its mandate, the Working Group also receive information on alleged human rights abuses and, where deemed appropriate, intervene directly with States, business enterprises and others on such allegations. Such intervention can relate to a human rights abuse which has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned States and business enterprises to draw their attention to the facts of the allegations made and the applicable international human rights norms and standards, in particular the core concepts, obligations, responsibilities and expectations set out in the Guiding Principles.

19. Communications sent and replies received remain confidential until they are published in join communications reports submitted to each regular session of the Human Rights Council (in March, June and September). In certain situations, including those of grave concern, the Working Group may issue a public statement earlier.

20. In its mode of inquiry, the Working Group encourages States to request from companies information on human rights due diligence and stress the need to ensure access to effective remedy. Depending on the facts of the allegations made, the Working Group may address itself both to home and host States of the company allegedly involved in a human rights abuse. Where relevant, the Working Group will do such communications jointly with other special procedure mandates of the Human Rights Council.

21. The Human Rights Council, in its resolution 26/22, encouraged States and private businesses to cooperate fully with the Working Group including by responding to communications transmitted.

7. Providing guidance for national policies and action plans

22. In its resolution 26/22, the Human Rights Council noted the important role that national action plans and other such frameworks on business and human rights can play as a tool for promoting the implementation of the Guiding Principles, welcoming the efforts of the Working Group to develop guidance for the development and implementation of national action plans, and encouraging States and other stakeholders to engage with the Working Group in developing such Guidance.

23. The Working Group's Guidance on National Action Plans was launched at the Third annual Forum on Business and Human Rights in December 2014. The guidance document will be updated and reviewed periodically to take into account feedback from users, and the Working Group invites States and all stakeholders to use the guidance document and to share with the Working Group and with other users lessons learned from national action plan processes.

24. The Working Group will seek to support the development of effective national action plans and other policies, through inclusive multi-stakeholder processes, to protect against adverse human rights impacts by business enterprises in conformity with the Guiding Principles.

8. Identifying good practice and global progress

25. The Human Rights Council, in its resolution 26/22, welcomed the efforts of the Working Group to build a database of national action plans and other relevant data on global progress in the implementation of the Guiding Principles, and in this regard encouraged States to submit information on their national action plans and other relevant initiatives, with annual reports on the implementation of such commitments, and invites all relevant stakeholders to submit relevant information to the Working Group.

26. The Working Group will seek to identify, exchange and promote good practices and lessons learned on the implementation of the Guiding Principles and to identify and collect data on global progress.

9. Enhancing access to effective remedies

27. The Working Group will explore options and make recommendations for enhancing access to effective remedies. In particular, it will include as an item on the agenda of annual and regional forums the issue of access to remedy, judicial and non-judicial, for victims of business-related human rights abuses. The Working Group will also collaborate with the United Nations High Commissioner for Human Rights in exploring legal options and practical measures to improve access to remedy, as per Human Rights Council resolution 26/22.

10. The annual Forum on Business and Human Rights

28. In its resolutions 17/4 and 26/22, the Human Rights Council mandated the Working Group to guide the Forum on Business and Human Rights, aimed at discussing trends and challenges in the implementation of the Guiding Principles and promoting dialogue and cooperation on issues linked to business and human rights. The Forum is held on an annual basis for three days, with one meeting day dedicated to the sharing of new tools and experiences.

11. Regional Forums on Business and Human Rights

29. In its resolution 26/22, the Human Rights Council welcomed the Working Group's convening of regional forums to discuss challenges and lessons learned from implementation of the Guiding Principles with States and other stakeholders in a regional context. Subject to available funding, the Working Group will continue to convene regional forums, to bring discussion to the regions and to use those discussions to feed back into the annual Forums.

12. Reporting

30. The Working Group submits annual reports to the Human Rights Council and the General Assembly, as per Council resolutions 17/4 and 26/22.